IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE MR JUSTICE BILAL NAZKI

and
HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 17652 of 2003

Between:

M/s.Balaji Steel Rolling Mills Private L A Private Limited Company incorporated under the provisions of Indian Companies Act,1956 having its Regd.Office at 22-5-232 Kalikman, Hyd-500002
rep.by its Director Sri.R.K.Gupta, S/o.Kaluram

..... PETITIONER

AND

1 The Designated Authority, Under Kar Vivad Samadhan Scheme, C/o.Commissioner of Central Excise, Commissionerate-III, Hyderabad.
2 The Superintendent of Central Excise, Nacharam Range, Habsiguda, Hyderabad.
3 Asst.Commissioner of Central Excise, Hyderabad-V Division, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction especially one in the nature of Writ of Mandamus and direct the 1st respondents to issue certificate in Form-3 under the provisions of Kar Vivad Samadhan Scheme, 1998 pursuant to Form No.2B already issued.

Counsel for the Petitioner:MR.S.RAVI

Counsel for the Respondents: Mr A.Rajasekhar Reddy, SC for CG

The Court made the following ORDER:

(per Hon'ble Sri Justice Bilal Nazki)

Petitioner received a show cause notice dated 28-1-1998 issued by the 2nd respondent. By this notice petitioner was informed that it had cleared goods without payment of duty and it was called upon to show cause why duty of Rs.80,488/- on 67.780 MT of inputs be not imposed upon it. There was also a proposal to impose penalty under Rule 173 (Q) of the Central Excise Rules, (hereinafter referred to as "the Rules"). Second show cause notice was issued on 4-2-1998. In this notice it was alleged that it had failed to pay duty of Rs.4,01,996/- for the months of November, 1997 and January, 1998. Third show cause notice dated 30-3-1998 was issued to the petitioner alleging that an amount of Rs.1,63,352/- was not paid towards duty, for the months of February and March, 1998. As the matter stood thus, the Parliament enacted Kar Vivad Samadhan Scheme, 1993 (hereinafter referred to as "the Scheme") as part of Section 91 of Finance Act 2 of 1998. Petitioner filed application under the said Scheme in respect of the three show cause notices offering to settle the dispute with the Central Excise department. The proposal filed by the petitioner through application under the Scheme was accepted by the designated authority in the office of Commissioner of Customs and Central Excise and certificates as contemplated under Section 91 of the Finance Act 2 of 1998 read with the Scheme were issued. Copies of the three notices have been filed as annexures to the writ petition. In terms of the first notice, petitioner was asked to pay Rs.82.832/-; in the second one it was asked to pay Rs.2,00,998/- and in respect of the third it was called upon to pay Rs.85,176/-. The total liability that the petitioner had to discharge was determined at RS.3,67,850/-. The petitioner challenged the levy of duty on furnace as pusher type, against the claim of the petitioner.

The only argument which has been raised in this writ petition is that the respondents should issue certificate in form 3 under the provisions of the Scheme and pass such further orders as are necessary.

Respondents in their counter stated that the proposal made by the petitioner had already been accepted and notices were issued by the department and the petitioner was directed to pay the central excise duty as per the annual capacity determination order dated 20-6-1997. Orders were passed on 22-1-1999 which was

received by the petitioner on 1-2-1999 and under the Scheme under which the petitioner sought the relief, it was mandatory to make the payments within 30 days from the date of receipt of the orders under the Scheme. The petitioner contended that it had made a representation that some funds which were available with the department and for which it was eligible for refund had to be adjusted against the liability and it had informed the department well within time to adjust the amounts against the liability. Whether the amount which is refundable could be adjusted against the liability under the Scheme or not is a question which we are not going to deal with presently because, on facts, we have been shown that even this letter was not received by the department within 30 days as it has made a representation only on 9-3-1998. On the last occasion the learned counsel for the petitioner had sought a direction to the respondents to produce the record as he was not sure as to when the order passed by the respondents under the Scheme had been received by petitioner although in his letter written to the department it had stated that it received the letter on or about 1-2-1999. The department has produced the record and we have seen that the order was dispatched through registered cover on 28-1-1999. It was posted in Hyderabad and it had to be delivered in Hyderabad. Therefore, we presume that it had been received by the petitioner by 1-2-1999. Since payment was not made within the stipulated period thereafter nor a representation was made within the stipulated period for adjustment, we do not find any merit in the writ petition. Writ petition is accordingly dismissed. No costs.

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BILAL NAZKI, J

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S.ANANDA REDDY, J

August 3, 2004.

nmr

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Designated Authority under Kar Vivad Samadhan Scheme, C/o.Commissioner of Central Excise, Commissionerate-III, Hyderabad.
2 The Superintendent of Central Excise, Nacharam Range, Habsiguda, Hyderabad.
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